

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ALFRED BROOKS,)
)
Plaintiff,)
)
v.) **Case No. CIV-18-1014-G**
)
MARIA ROBINSON et al.,)
)
Defendants.)

ORDER

This matter comes before the Court for review of the Report and Recommendation (Doc. No. 28) issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Plaintiff Alfred Brooks, a state prisoner appearing pro se, brought this action under 42 U.S.C. § 1983 alleging violations of his rights under the Eighth and Fourteenth Amendments to the U.S. Constitution. *See* Compl. (Doc. No. 1).

Judge Purcell has recommended dismissal of Plaintiff's claims. *See* R. & R. at 10-11. Plaintiff has objected to the Report and Recommendation. *See* Pl.'s Obj. to R. & R. (Doc. No. 29). Plaintiff's objection triggers de novo review of those portions of the Report and Recommendation to which objection is made. *See, e.g., United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff filed this lawsuit on October 12, 2018. On November 5, 2018, Judge Purcell entered an order directing Plaintiff to effect service of process on the named Defendants within 90 days of that order. *See* Order of Nov. 5, 2019 (Doc. No. 9) at 3-4.

Plaintiff thereafter attempted to serve the Defendants by certified mail. *See* Pl.’s Letter (Doc. No. 17) at 1. Unable to determine whether Defendants had received Plaintiff’s attempted service, Judge Purcell authorized the United States Marshal Service (“USMS”) to assist Plaintiff in serving Defendants. *See* Order of Apr. 1, 2019 (Doc. No. 19) at 4. On April 1, 2019, Judge Purcell directed Plaintiff to “provide a copy of the Order Requiring Service and Special Report, a copy of the Complaint, and a completed summons issued by the Court Clerk” for each Defendant within 21 days, explaining that the USMS would then “effectuate service of process upon Defendants in accordance with Fed. R. Civ. P. 4(c)(3).”

Id. at 4-5.

When Plaintiff failed to submit the necessary service papers within the allotted time frame, Judge Purcell ordered Plaintiff to show cause as to why the case should not be dismissed. *See* Order of May 31, 2019 (Doc. No. 23). Plaintiff’s response to the show-cause order reflected a lack of understanding regarding his service obligation under the April 1, 2019 order. *See* Pl.’s Resp. (Doc. No. 26) at 1-4. Thus, on June 19, 2019, Judge Purcell entered an order clarifying Plaintiff’s obligation and giving Plaintiff an additional 21 days—i.e., until July 10, 2019—to comply with the order’s specific instructions. *See* Order of June 19, 2019 (Doc. No. 27). Judge Purcell cautioned that “[u]nless Plaintiff provides the necessary service papers for each Defendant to the Court Clerk no later than July 10, 2019,” he would recommend dismissal of the action without further notice. *Id.* at 5.

As of July 19, 2019, Plaintiff had not provided the service papers as directed. Accordingly, Judge Purcell issued his Report and Recommendation, recommending that

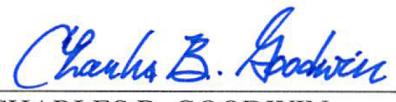
Plaintiff's action be dismissed for failure to prosecute and to comply with court orders. *See* R. & R. at 10-11. Judge Purcell also cited Federal Rule of Civil Procedure 4(m) and concluded that: (1) Plaintiff was not entitled to a mandatory extension of service time because he had not shown good cause; and (2) Plaintiff was not entitled to a permissive extension of service time, in part because he took no action in response to the June 19, 2019 order. *See id.* at 7-10.

In his Objection to the Report and Recommendation, Plaintiff represents that he never received a copy of the Court's June 19, 2019 Order and was therefore unaware of his outstanding obligation to provide service papers. *See* Pl.'s Obj. to R. & R. at 4-5. Plaintiff presents mail logs from the facility at which he is detained that arguably support his contention. The docket sheet for this case does not indicate that a copy of this Order was mailed to Plaintiff or otherwise transmitted to him. In light of this record reflecting a reasonable likelihood that the Order was not received, the Court finds that Plaintiff has shown good cause for an extension of time to take the actions required of him in the June 19, 2019 Order.

CONCLUSION

Accordingly, the Court DECLINES to adopt the Report and Recommendation (Doc. No. 28). The Court re-refers this matter to Magistrate Judge Purcell for additional proceedings consistent with the original order of referral (Doc. No. 4).

IT IS SO ORDERED this 20th day of December, 2019.


Charles B. Goodwin
CHARLES B. GOODWIN
United States District Judge